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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,191	03/23/2004	Bernd Bartenbach	54396	2016
26474 7590 06/02/2009 NOVAK DRUCE DELUCA + QUIGG LLP 1300 EYE STREET NW SUITE 1000 WEST TOWER WASHINGTON, DC 20005				
EXAMINER				
BOYER, RANDY				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
06/02/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/806,191

**Applicant(s)**

BARTENBACH ET AL.

**Examiner**

RANDY BOYER

**Art Unit**

1797

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 18 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Jill Warden/  
Supervisory Patent Examiner, Art Unit 1797

/RPB/

Continuation of 11, does NOT place the application in condition for allowance because:

Applicant's arguments are not persuasive to overcome the previous rejections. Consequently, the previous objections and rejections would be maintained for the detailed reasoning set forth in the previous Office Action (final rejection) mailed 18 March 2009 and for the following reasons.

1. Applicant argues that Stapf does not teach using indirect cooling in a process for carrying out a high-temperature reaction at a temperature of at least 1500C and with a short residence time.

In response to Applicant's argument, Stapf discloses that "[c]ommon features of the known methods for the preparation of acetylene are that the reaction temperature is above 1400C and that the residence times are in the region of milliseconds" (see Stapf, column 2, lines 63-66).

2. Applicant argues that according to Applicant's claims, there is no firing performed before the reactor is used for executing the reaction. Since generally a ceramic is fired before its use, the subject matter of Applicant's claim 8 is not obvious to a person having ordinary skill in the art.

In response to Applicant's argument, such argument fails to comply with 37 CFR 1.111(b) because it amounts to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

3. Regarding the obviousness-type double patenting rejection, Applicant argues that claims 1 and 4-6 of U.S. Pat. No. 6,869,279 are not directed to a reactor for carrying out a high-temperature reaction where the reaction mixture is subsequently rapidly cooled in the quench area, characterized in that in the quench area firstly a direct cooling to a temperature in the range from 650C to 1200C takes place by supply of an evaporating quench medium and subsequently in the quench area an indirect cooling in a heat exchanger takes place.

In response to Applicant's argument, Examiner notes that process limitations included within an apparatus claim do not STRUCTURALLY distinguish the claimed apparatus from that of a prior art apparatus. See MPEP 2114.

4. Regarding the objections, Applicant argues that according to MPEP 2111.02, "[a]ny terminology in the preamble that limits the structure of the claimed invention must be treated as a claim limitation."

In response to Applicant's argument, Examiner notes that there is NOTHING in Applicant's claims 21 or 26 that limits the STRUCTURE of the apparatus (reactor) of claim 8.

/RPB/